



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 26]

नई दिल्ली, शनिवार, जुलाई 14, 1984/आषाढ़ 23, 1906

No. 26]

NEW DELHI, SATURDAY, JULY 14, 1984/ASADHA 23, 1906

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate paging is given to this Part in order that it may be filed as a separate
compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़ कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं

Orders and Notifications issued by Central Authorities (other than Administrations of
Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 21 मई, 1984

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
DIST. GANDHINAGAR

ELECTION PETITION NO. 1 OF 1982

In the matter under section 80 read with Sections 100 and
123 of the Representation of People Act, 1951

(Act No. 43 of 1951)

AND

In the matter between ;

Patel Indubhai Chaturbhai Adult, Occupation Social Ser-
vice, Residing at Maninagar, Ahmedabad-380008
...Petitioner.

V/s.

Patel Vithalbhai Motiram Adult Occupation : Journalist
Patrikar Colony, Narshpura, Ahmedabad-380013 and
others
...Respondents.

April 9, 1984

Election Petition No. 1 of 1982

Mr. A. H. Ahmadi.

Mr. B. B. Oza for Mr. K. G. Vakharia—for the petitioner
Mr. H. M. Mehta—for Respondent No. 1.
Mr. Hamid Qureshi—for Respondent No. 2.
Mr. P. S. Patel—for Respondent No. 3.
Messrs H. M. Mehta and S. R. Shah—for Respondent
No. 4.

[No. 82/GJ-CS/1/82/84]

By order,

V. K. RAO, Under Secy.
Election Commission of India

आ० अ० 78.—1982 की निर्वाचन अर्जी सं० 1 में
गुजरात उच्च न्यायालय, अहमदाबाद के नारिख 9 अप्रैल,
1984 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951
(1951 का 43) की धारा 106 के अनुसरण में निर्वाचन
आयोग इसके द्वारा प्रकाशित करता है।

[सं० 82/गुज० रा० सं० 1/82/84]

आदेश में

वी० के० राव, अवर सचिव
भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

New Delhi, the 24th May, 1984

O.N. 78.—In pursuance of section 106 of the Represen-
tation of the People Act, 1951 (43 of 1951), the Election
Commission hereby publishes the judgment of the High Court
of Gujarat at Ahmedabad dated 9th April, 1984 in Election
Petition No 1 of 1982.

Coram A M Ahmadi J

(April 9, 1984)

C A V Judgment —

The election to the Council of States from Gujarat for filling in four vacancies was held on 19th March 1982. The petitioner was one of the candidates at the said election along with respondents Nos 1 to 4. Respondents Nos 1 to 4 were declared elected. Thereupon the unsuccessful candidate has filed in the Election Petition the relevant facts briefly stated as under —

2 The election programme for filling in four vacancies in the Council of States from Gujarat was declared in February 1982. At that point of time the Gujarat Legislative Assembly consisted of 181 members the election on party lines being as under —

Indian National Congress (I)	144
Janata Party	8
Bharatiya Janata Party	11
Lok Dal	1
Independents	7
	—
	181
	—

One seat was lying vacant on the demise of one of the members of the Assembly. The petitioner was a candidate of the combined opposition nominate including the independents, the total strength whereof was 37 in number. Having regard to the strength of the Congress (I) at the relevant point of time it was thought that not more than three of its candidates could succeed at the election. The petitioner believed that in view of the combined opposition strength of 37 members, he had a fair chance of success if he secured the first preference votes of all of them. Even though the Congress (I) was expected to put up only three candidates in view of its strength in the Assembly respondent No 1 an independent member and a friend of the Chief Minister Shri Madhavasingh Solanki filed his nomination for election along with the three Congress (I) official candidates that is respondents Nos 2, 3 and 4. The petitioner contends that the entry of respondent No 1 as one of the contestants created an atmosphere of distrust amongst respondents Nos 2, 3 and 4 who apprehended that in view of the close association of respondent No 1 with the Chief Minister the latter's support may influence the voting more so because it was rumoured that the Chief Minister did not favour respondents Nos 2 and 4 particularly the latter because of his close association with Shri Ratubhai Adani who led the faction opposed to the Chief Minister. According to the petitioner at the relevant point of time the Congress (I) was faction ridden and because of the bitterness prevailing between the two groups one led by the Chief Minister Shri Madhavasingh Solanki and the other by Shri Ratubhai Adani it was feared that the Chief Minister may throw his weight in favour of respondent No 1 at the cost of independent No 1. To ensure that this did not happen, two observers were deputed by the Congress High Command with instructions to allocate the votes to avoid a boycott. Accordingly contends the petitioner instructions were given to some of the Congress (I) voters to cast their votes in such a way so as to make it possible to know and identify that they have voted for the respondent to whom their votes were allocated. In other words according to the petitioner because of the atmosphere of distrust created on the entry of respondent No 1 as one of the contestants certain instructions were issued to the Congress (I) voters whose loyalty was suspected to vote in a manner as would enable the Congress (I) party to verify whether these suspect voters had voted according to the allocation of votes made by the two observers in favour of the three official candidates. It would be advantageous at this stage to reproduce the exact averment in this behalf made in paragraph 6 of the petition —

6 "The petitioner states that in the above mentioned circumstances the respondents and their supporters were doubting that some of the Congress (I) voters, though allotted to them may not vote for them but vote for other Congress (I) candidates. Under these circumstances instructions were given to some of the Congress (I) voters whose loyalty was doubtful to cast their votes in such a way so as to make it possible to know and identify that they have voted for the respondent to whom their votes were allocated

Accordingly, some such doubtful voters while recording their preferences stretched figure 1 or 2 on ballot papers in such a way that it may be possible to find out that they had actually voted for the respondent for whom their votes were allocated. Likewise some of the suspected and doubtful voters had put some sign like 'O' or dots on the ballot papers so that it can be ascertained that they had actually voted for the respondents for whom their votes were allocated. Not only that they had adopted the practice of either putting a figure or putting some mark like 'O' or dots and some of the voters has marked their preference in the red ink or in the blue ink or in black ink either by their own fountain pen or by their own ball pen though specific instructions were given by the Returning Officer not to make use of one's fountain pen or ball pen but to mark the preferential figures only by the instrument supplied at the polling booth.

From the above averments it becomes clear that according to the petitioner the suspect voters were instructed to resort to any one or the sign namely (i) stretching of figures 1 or 2 (ii) using marks like 'O' or dots and (iii) using instrument other than the one supplied having red blue or black ink for marking their preferences so that if need be the identity of the elector can be established.

3 Shri Chimanbhai Patel M.L.A. and Ex Chief Minister of Gujarat was the petitioner's election agent at the said election. His counting agent was Shri Manubhai Kotadia M.L.A. and Ex-Deputy Minister of this State. Both of them were present when the votes were counted by the Returning Officer Shri Barot. The Petitioner contends that certain invalid votes were considered to be valid by the Returning Officer notwithstanding the objection raised by the petitioner's election agent. The exact words in which the contention has been raised in paragraph 7 of the petition may be reproduced —

7 "The petitioner's election agent and counting agent have noticed many ballot papers with either figure 1 or 2 unusually stretched or some sign like 'O' or dots on ballot papers or the preferential figures marked by an instrument not supplied at the polling booth but marked by an instrument like fountain pen or ball pen. The total number of votes cast were 180 and the Returning Officer had considered all the ballot papers as valid in spite of their being marks as mentioned above on the ballot papers which may lead to the identification of the voters. It is submitted that counting of such ballot papers is in breach of cardinal principles of secrecy of voting for fair and just election."

The petitioner therefore contends that the reception of invalid votes has materially affected the result of the election.

4 From the aforesaid averments made in the petition it is clear that the validity of the election is challenged on the ground that suspect voters were instructed to vote (i) by recording their preference by stretching the figure 1 or 2 on their ballot papers, (ii) by putting or making some sign like 'O' or dots on the ballot papers, and (iii) by marking their preferences with their own pen in red blue or black ink. To prove these allegations reliance is placed on the evidence of P.W. 1 Shri Chimanbhai Patel the petitioner's election agent and P.W. 2 Shri Manubhai Narayanbhai Kotadia the petitioner's counting agent. There is no other direct testimony on this point.

5 P.W. 1 Shri Chimanbhai Patel deposes that he as well as Shri Manubhai Kotadia were present in the Legislative Assembly when the votes were counted by Shri Barot. He states that during the counting he noticed one ballot paper wherein the figures 1 and 2 appeared like symbols and not figures and they were so marked as to make it difficult to know against which column they were written. He states that he had raised on oral objection so far as the ballot paper is concerned but the same was overruled by the Returning Officer. He also deposes that in the course of counting he also noticed that in some of the ballot papers the figures 1 and 2 were overwritten in some there were dots and in a few others there were asterisk or cross marks. The ink on these ballot papers, says the witness was not the same and it appeared that the votes were marked by an article other than the one

supplied for the purpose. According to him there were six or seven such ballot papers. From these six or seven ballot papers the witness suspected that this sort of procedure was adopted to enable the identification of suspect voters. Under cross-examination the witness has deposed that after raising an objection regarding one ballot paper, he did not raise any objection about the other six or seven ballot papers because his objection in connection with the first was rejected by the Returning Officer. He has denied the suggestion that not a single objection was raised in regard to any ballot paper. The Election Commission was not approached on the objection having been overruled but the witness deposes that he had brought this fact to the notice of the petitioner and had advised him to consult his lawyer. He concedes the fact that he was permitted to inspect the ballot papers. He also deposes that the counting agent Shri Manubhai Kotadia did not raise any objection before the Returning Officer even though he had drawn his attention to the irregularity/peculiarity noticed by him. Therefore, according to this witness so far as one ballot paper in concern, he noticed that the figures appeared to be symbols and they were not so written as to enable the Returning Officer to know to which column they belonged. It was only in regard to this vote that an objection was raised by the election agent. Admittedly, no objection was raised in regard to the other six or seven ballot papers which according to the witness had dots, asterisk or cross marks and were written in different inks. There is no mention in the evidence of this witness that he saw 'zero' marks on any of the ballot papers. Even the counting agent did not raise any objection notwithstanding his attention having been drawn to the said irregularity or peculiarity.

6. P.W. 2, Shri Manubhai Kotadia, deposes that while the counting was in progress he noticed that six or seven ballot papers carried marks like dots, asterisks, crosses or overwritings. He also deposes that the voters had used different ball pens than the one provided at the booths. He says that by overwriting he means " " meaning thereby that the same figure was overwritten to make it bold. So far as one vote in regard to which objection was raised by P.W. 1 is concerned, he deposes that it was not possible to determine to which column the marks belonged. It is significant to note that the witness does not state that the figures were like symbols as deposed by P.W. 1. In cross-examination he admits that he has no personal knowledge regarding the alleged instructions issued to suspect voters. He states that this was the impression formed from what he had heard from others whose names he could not divulge. He also admits that no oral or written protest was lodged in regard to the six or seven ballot papers which contained marks like dots, asterisks, crosses or overwritings. He concedes that the irregularities in these six or seven votes were serious but he did not raise any objection because he thought the Returning Officer would over rule the objection as was done in the case of one vote in respect of which P.W. 1 had raised an objection. It also did not occur to him to lodge a formal protest for the purpose of record even if he was of the view that the objection would be overruled by the Returning Officer. He also did not make any note in regard to the said six or seven objectionable votes even though inspection was permitted to them. He was, therefore, not in a position to state to which respondent these six or seven objectionable votes went. This is in brief the evidence of the aforesaid two witnesses examined on behalf of the petitioner. The respondents have not examined any witness to counter this testimony.

7. The petitioner himself has not entered the witness-box. The verification clause shows that he has merely stated the averments made in paragraph 1 of the petition as true whereas the averments made in paragraphs 2 to 13 are stated to be 'true to my information'. Paragraph 14 is the relief clause. It will, therefore, appear that the petitioner made the averments in the relevant paragraphs on information received by him. The evidence of P.W. 1 discloses that he had brought the irregularities/peculiarities noticed in the ballot papers during the counting to the notice of the petitioner and had advised him to seek the opinion of his advocate. It would, therefore be reasonable to infer that the averments made in the petition so far as the allegations regarding irregularities in the ballot papers are concerned must have been at the instance of P.W. 1, amongst others. Neither P.W. 1, nor P.W. 2 depose to have seen zero marks on any of the ballot papers. They speak about asterisk and cross marks in regard to which there is no mention in the body of the petition. P.W. 1 has also deposed that in one of

the ballot papers he noticed figures 1 and 2 written like symbols. There is no such allegation in the petition. In the petition there is an averment that in many of the ballot papers either figure 1 or 2 was found to be unusually stretched but the two witnesses examined on behalf of the petitioner have not said so in their evidence before the Court. All that they have deposed is that in one of the ballot papers the figures were so marked that it was difficult to ascertain to which column they belonged. In the pleadings there is no such precise allegation. It, therefore, becomes clear that the witnesses have gone beyond the pleadings in deposing that in one of the ballot papers the figures were marked like symbols and were so written that it was difficult to identify in whose favour the preferences were cast and that in six or seven other ballot papers in regard to which no objection was raised, asterisks and cross marks were noticed. Therefore, the version of these two witnesses regarding the existence of asterisk or cross marks is inconsistent with the averments or allegations made in the petition. While the petition speaks about some of the ballot papers containing "0" marks, these two witnesses are totally silent on that point.

8. Both the witnesses are experienced politicians who have held high offices in the State Ministry. Both these witnesses were present at the time of counting. They were permitted to inspect the ballot papers by the Returning Officer. Objection was raised as regards the validity of only one vote and that too by P.W. 1 alone. No objection was raised in regard to the six or seven votes which contained, according to the two witnesses, marks which would help identify the voter. The omission to raise an objection in regard to those six or seven votes is sought to be explained away on the specious plea that the Returning Officer was likely to overrule the same as he had done in the case of one ballot paper. It is difficult to accept this explanation because there is no reason to think that the Returning Officer was not likely to uphold the objection even if it was valid. The explanation casts an unwarranted doubt on the impartiality of the Returning Officer. There is not an iota of evidence on the record to conclude that the Returning Officer Shri Barot was so biased that he would not uphold a valid objection, if raised. No such allegation is made against the Returning Officer in the petition. In the evidence also the witnesses have not in unequivocal language doubted the impartiality of the Returning Officer but the explanation for the mission to raise an objection in regard to the six or seven votes implies that they thought that the Returning Officer would not act impartially. Since the Returning Officer is not party to this petition, he would have no opportunity to counter this imputation which can be read between the lines and, therefore, I think it is necessary to emphatically state that there is no evidence worth the name to doubt the impartiality of the Returning Officer.

9. After the evidence of all the witnesses that the petitioner desired to examine concluded an application for the production and inspection of used ballot papers was made. I rejected that application by my order dated 16th December, 1982. Against the said order the petitioner moved the Supreme Court for special leave. Special leave was granted and further proceedings were ordered to be stayed. The said appeal, Civil Appeal No. 497 (NCF) of 1983 was disposed of by the Supreme Court on 1st December, 1983 in the following words:—

"In this election appeal we have heard the counsel for the parties and have gone through the judgment of the High Court. We agree with the High Court that this was not a fit and proper case for allowing inspection at this stage. It will, however, be open to the Court itself to inspect the documents, if necessary, in the light of the evidence and the arguments of the above parties. Any observation made by the High Court in its judgment and in this appeal have been made only for the purpose of deciding the limited matter arising for consideration and would not prejudice either party. The appeal is accordingly dismissed."

Pointing out the Supreme Court's observation that it would be open to this Court to inspect the documents, if necessary,

Shri Oza, the learned advocate appearing on behalf of Shri Vakharia made an oral request on 19th March, 1984 to call for the used ballot papers and to inspect them. Accordingly I directed the Returning Officer to produce the used ballot papers for the Court's inspection on 26th March, 1984. Because of a communication gap, the ballot papers could not be produced on that date but were produced for Court's inspection on 2nd April, 1984. After inspecting the ballot papers, I dictated a short order (inspection note) in Court in the presence of the learned advocates for the parties. During inspection all the votes were found to have been marked in blue ink. There was not a single ballot paper marked in red or black ink. The figures expressing preference were also found to be clearly marked. In one ballot paper wherein the first preference vote was marked against the name of respondent No. 2 and the second preference vote was marked against the name of respondent No. 1, the figure "1" written in Gujarati required closer look but it was not difficult to decipher the figure. There was another ballot paper in which the first preference vote was went to respondent No. 4 and the second to respondent No. 3 which disclosed that the writer's hand was not stable (perhaps due to tremors) but the figures could be clearly deciphered. There were two ballot papers in which the first preference votes were cast in favour of the petitioner wherein the figure '1' was rewritten or overwritten. Similarly, there was another ballot paper in which the first preference vote was marked in favour of respondent No. 2 whereas the figure '1' was made bold by re-writing. There was yet another ballot paper in which the first preference vote went to respondent No. 1 where the figure '1' was made bold by re-writing. There was not a single ballot paper containing any marks whatsoever which would help identify the voter. Not a single ballot paper carried any mark like zero, dots, asterisks or cross marks or any symbol. The counsel for the respondents, therefore, submitted that P.W. 1 and P.W. 2 because of their political bias had gone beyond the averments in the petition and had made in the course of evidence palpably false statements to the effect that during the counting they had noticed certain marks like dots, asterisks and cross marks on the ballot paper. He also submitted that the averment in the petition and the statements made in that behalf by P.W. 1 and P.W. 2 in the course of their oral evidence that some of the ballot papers were marked in different inks by an article other than the one supplied for the purpose is shown to be false by the inspection note referred to earlier.

10. There is no doubt that P.W. 1 and P.W. 2 have made statements in their oral evidence which are now found to be totally contrary to record. During the course of counting they had an opportunity to inspect the ballot papers. P.W. 1 in no uncertain terms states that he was permitted to inspect the ballot papers. It is his say that he had seen dots, asterisks and cross marks and writings in different ink on the ballot papers during counting. He had also drawn the attention of P.W. 2 to these irregularities/peculiarities. P.W. 2 also admits to have noticed six or seven ballot papers containing such marks. He states that he considered these irregularities/peculiarities. P.W. 2 also admits to have noticed six or seven ballot papers containing such marks. He states that he considered these irregularities to be of a serious nature. Therefore, both the witnesses have made positive statements on the basis of what they claimed to have perceived at the time of counting. On the inspection of the used ballot papers it is found that these statements are wholly untrue. The learned counsel for the respondents was, therefore, justified in his criticism so far as the evidence of these two witnesses on this aspect of the case is concerned.

11. In paragraph 9 of the petition the petitioner has averred that there was an error in ascertainment of quota, in counting of the votes of the first count, second count, third count and the last count and also in transfer of surplus votes which also had a direct impact on the result of the election. On this point no evidence is led. The election agent and the counting agent who have been examined as witnesses have not uttered a word in support of this allegation. No submission was made in this behalf by the learned counsel for the petitioner. Hence it can safely be inferred that this contention is given up. Even otherwise in the absence of evidence it must be held to be not proved.

12. The validity of the election of the respondents is also challenged on the ground that they resorted to corrupt practices. In paragraph 10 of the petition the petitioner contends that 'the election of the respondents is required to be declared void inasmuch as corrupt practices have been committed by them or by any other person with the consent of the returned candidates'. The corrupt practices alleged are two in number. Firstly, the Chief Minister Shri Madhavasinh Solanki who was keen on the success of respondent No. 1 secured the defection of one Shri Mohanlal Desai, M.L.A. from Kheralu belonging to the Janata Party on the promise that his demand for a sugar factory licence in his constituency will be satisfied. The exact words in which the allegation is couched are as under :—

"The said Shri Mohanlal Desai, as per the news report in the daily newspaper Sandesh dated 19th March, 1982 appears to have stated that the Chief Minister Shri Madhavasinh Solanki in the presence of four Ministers had assured him to accept his demand for the licence of sugar factory and therefore he has defected from the Janata Party to the Congress (I)."

Proceeding further, the petitioner avers as under :—

"The petitioner states that Chief Minister Shri Madhavasinh Solanki who was working for the success of the respondents and more particularly, the respondent No. 1, had assured Shri Mohanlal Desai, M.L.A. who was also a voter, to give licence for sugar factory at Kheralu if he defects to Congress (I) Party and agrees to vote in favour of the respondents and more particularly in favour of the respondent No. 1. The offer of promise to give licence for sugar factory at Kheralu by Shri Madhavasinh Solanki with the consent of the respondents and more particularly, respondent No. 1 to Shri Mohanlal Desai for the purpose of his vote in favour of the respondents and more particularly, for the respondent No. 1 amounts to corrupt practice of bribery as contemplated under Section 123(1) of the Representation of the Peoples Act, 1951."

Secondly, the petitioner avers that the Chief Minister secured the entry of Shri Anthrolia Sukhabhai Ramabhai M.L.A. from Mangool (Junagadh District) to the Congress (I) holding out a promise that in the next election he would be given a ticket by the Congress (I) Party. The exact words in which the allegation is couched may be reproduced here :—

Shri Sukhabhai Ramabhai was promised by Shri Madhavasinh Solanki, Chief Minister and the leader of the Congress (I) Legislature Party with the consent of respondents, for Congress (I) ticket in the next election for the State Assembly and also all the expenses which he may require to incur to fight the election for the State Assembly.

According to the petitioner this promise held out for securing the independent M.L.A.'s entry into the Congress (I) Party was with the consent of the respondents, more particularly, respondent No. 1. This amounts to corrupt practice which vitiates the election of the respondents.

13. In order to prove this allegation of the Chief Minister Shri Madhavasinh Solanki having secured the entry of the aforesaid two M.L.As. into the Congress (I) Party holding out the promise to grant a licence for a sugar factory in Kheralu to one and to grant a Congress (I) ticket to contest the next election to the other, petitioner has examined five witnesses, namely, P.W. 1 Shri Chimanbhai Patel, P.W. 2 Shri Manubhai Kotadia, P.W. 3 Shri Parmanand Gandhi of Sandesh daily, P.W. 4 Shri Dahyabhai P. Patel, an M.L.A. and P.W. 5 Shri Bhupatrai T. Parekha of Hindustan Samachar. P.W. 1 after narrating the fact that at the relevant point of time the Congress (I) Party in the Legislative Assembly was faction-ridden and the entry of respondent No. 1 into the fray had created doubts in the minds of respondents Nos. 2 and 4, particularly the latter, proceeds to depose that he knew Shri Mohanlal Desai, M.L.A. from Kheralu elected on Janata Party ticket since sometime. He was absent from the State Assembly on 16th March, 1982 which had given rise to rumours that he was

likely to defect to the Congress (I) Party. The said Shri Mohanlal Desai, however, attended the Assembly on the next day and on inquiry he stated that he had gone to his constituency in connection with some local election when his attention was drawn to the rumours he is stated to have told the witness that he had demanded a price for switching over and since the Chief Minister was not in a position to accede to his demand, the question of his crossing over to the Congress (I) did not arise. On further inquiry he told the witness that he had demanded a licence for a sugar factory and if the same was granted, he would switch over to the Congress (I). On that very night at 10 O'clock, information was received that some agreement was struck with the said Mohanlal Desai whereupon the witness alongwith P.W. 2, P.W. 4 and others rushed to the room of Mohanlal Desai in Vishram Gruh at Gandhinagar. When they reached there, they found the door of Mohanlal Desai's room bolted from inside. They knocked at the door whereupon Mohanlal Desai opened it. On inquiry Mohanlal Desai is stated to have told the witness that the Chief Minister had assured him of a licence to establish a sugar factory in his constituency and, therefore, he had decided to switch over to the Congress (I) Party. The witness further deposes that Mohanlal Desai told him that the promise was extracted in the presence of two guarantors and, therefore, he had decided to rely on the word of the Chief Minister. On the next day the Speaker made the announcement in the Assembly that Mohanlal Desai had joined the Congress (I) Party. Under cross-examination P.W. 1 has denied the suggestion that he had no talk whatsoever with Mohanlal Desai on 17th March, 1982 and that the entire story about is talk with Mohanlal Desai was a concoction.

14. P.W. 2 has come out with the same version so far as the defection of Mohanlal Desai is concerned. In cross-examination he has admitted that the power to issue a licence for a sugar factory rests with the Central Government and not the State Government. He, however, states that the Central Government takes a decision on the recommendation of the State Government. He could not state if the Central Government had at any point of time in the past granted a licence overruling the objection of the State Government. He was not able to state if the licences in respect of sugar factories at Bardoli, Madhi and Chalathan were granted by the Central Government, the objection of the State Government notwithstanding. On the question whether Mohanlal Desai had been granted a licence on the date his deposition was recorded (7th December, 1982, that is, almost six months after Mohanlal Desai's defection), he stated that he had not made any inquiry in that behalf. He also could not state if any action had been initiated for the grant of licence for a sugar factory in the constituency of Mohanlal Desai or to Mohanlal Desai personally. He also could not state if Mohanlal Desai had taken any steps to secure a licence as promised by the Chief Minister.

15. P.W. 4 was elected to the Gujarat Legislative Assembly in 1980 on a Janata Party ticket from Patan in Mehsana district. He too deposes to have gone to the room of Mohanlal along with P.W. 1, P.W. 2 and others on the night of 17th March, 1982. According to him a telephone call was received at about 10.00 P.M. while they were at the room of P.W. 2 and immediately thereafter they had gone to the room of Mohanlal Desai. He states that when Mohanlal Desai came out of the room, on being asked he stated that he had joined the Congress (I) Party because the Chief Minister had promised the grant of a licence for a sugar factory in his constituency. In other words, he gives out the version given out by P.W. 1 and P.W. 2. In cross-examination he denies the suggestion that the entire version is a concoction. He, however, concedes that till the date of his evidence (14th December 1982) he had not made any inquiry to find out if any licence for a sugar factory was issued as promised by the Chief Minister. He also admits that he has made no inquiry to find out if Mohanlal Desai has in fact applied for a licence for a sugar factory. He does not know the location for the proposed sugar factory. In short he admits that he has made no inquiry whatsoever to find out if any follow up action was taken during the intervening period for the grant of a licence to Mohanlal Desai as per the alleged promise.

16. This brings me to the evidence of the two Journalists, one belonging to the daily 'Sandesh' and the other to 'Hindustan Samachar'. P.W. 3, Chief Reporter of 'Sandesh', a Gujarati daily published from Ahmedabad writes two columns in the said newspaper under the headings 'Ajni Vat' and 'Kuch Dekha Kuch Suna'. He was covering the Rajya Sabha election from Gujarat in the month of March 1982. He has produced a copy of the newspaper of 8th March, 1982 wherein there is a mention about Shri Yogendra Makwana's nomination as a Congress (I) candidate thirty minutes after the report about his having been dropped was flashed. He has, however, conceded in cross-examination that he cannot vouchsafe about the truth of the contents of that report. He has also produced copies of his newspapers of 17th and 18th March, 1982. In the issue of 18th in the column 'Kuch Dekha Kuch Suna' he has made certain statements concerning the defection of Mohanlal Desai. He states that those statements were made on the basis of what Mohanlal Desai told him and other journalists. In the newspaper of 19th in the said column he has printed a clarification stated to have been given by Mohanlal Desai in answer to a question posed by him. It transpires from his cross-examination that he had met Mohanlal Desai a few days before his defection was announced. He had met him in the presence of certain opposition M.L.As., including P.W. 4. P.W. is silent on this point. He expressed his inability to state the names of the other M.L.As. who were present at that point of time. He has denied the allegation that the entire story concerning the defection of Mohanlal Desai is got up.

17. The other journalist, P.W. 5, deposes about the groupism in the Congress (I) party at the relevant point of time and then proceeds to add that he knew Mohanlal Desai since he was elected on Janata Party ticket. He states that before his defection there were rumours that he was likely to change loyalty. He had asked Mohanlal Desai if it was true and Mohanlal Desai had told him that he would join the Congress (I) only if permission to establish a sugar factory in the co-operative sector in his constituency was granted. He further deposes that on 17th March, 1982 when he and other journalists got down from their car, they spotted Mohanlal Desai and met him in the canteen of the Assembly. On that occasion also, he reiterated his demand for a sugar factory to change loyalty. On the next day the Speaker announced in the Assembly that Mohanlal Desai had joined the Congress (I) Party. The witness deposes that when Mohanlal Desai came out of the Assembly hall, he inquired of him if his demand was conceded whereupon he was told that the Chief Minister had conceded his demand. In cross-examination he has stated that after the announcement was made in the Assembly, when he met Mohanlal Desai he did not try to ascertain from him the location of the proposed sugar factory, the name in which the licence was to be obtained, etc. In other words, he did not make any inquiry to find out the details of the demand concerning the licence for the sugar factory because he did not find it necessary from the Journalists' point of view. He denied the allegation that the entire story is a concoction.

18. From the evidence of the aforesaid five witnesses it becomes clear that Mohanlal Desai was elected from the Kheralu constituency on a Janata Party ticket to the Gujarat Legislative Assembly. He was a Janata Party legislator till he defected to the Congress (I) on 18th March, 1982. The evidence is to the effect that his price for defection was the grant of a licence for a sugar factory in Kheralu. Till this demand was conceded, he did not change loyalty. It is the petitioner's case that during the Rajya Sabha elections in March, 1982, the Chief Minister Shri Madhavsingh Solanki was keen to secure defection to ensure the success of the Congress (I) candidates, particularly his friend respondent No. 1. He found Mohanlal Desai vulnerable because the letter had all along been stating that he would be prepared to join the Congress (I) if his demand was conceded. According to the petitioner the demand was conceded on the night of 17th March, 1982 whereupon Mohanlal Desai joined the Congress (I) Party. An announcement to this effect was made in the Assembly by the Speaker on 18th March 1982. The information that Mohanlal Desai had agreed to join the Congress (I) was received by P.W. 1, P.W. 2 and P.W. 4 on the night of 17th March 1982. They according to the evidence, immediately contacted Mohanlal Desai, where-

upon the latter is alleged to have stated that since his demand was conceded by the Chief Minister, he had agreed to join the Congress (I) party. After the announcement was made in the Assembly on 18th March, 1982, he is stated to have reiterated the same to the two journalists as well as others. The story given out by all the witnesses is, therefore, identical. They claim that they were told by Mohanlal Desai that the Chief Minister had conceded his demand for the grant of a sugar factory in Kheralu

and, therefore, he had switched over to the Congress (I) Party. The question is, in the absence of the evidence of Mohanlal Desai what value can be attached to this evidence? Mohanlal Desai though available has not been examined as a witness presumably because the petitioner did not expect him to support his version. None has, however, stated so in so many words.

19. Is the statement made by Mohanlal Desai true assuming he made it is the question which arises for consideration for the sake of argument I will assume that Mohanlal Desai told all these witnesses that he had switched over to the Congress (I) because the Chief Minister had promised the grant of licence for a sugar factory in Kheralu. Can these statements attributed to Mohanlal Desai be accepted without a demur in the absence of an opportunity to cross-examine him? Does the evidence on record suggest, firstly, that such a statement must have been made by Mohanlal Desai and, secondly, that the statement is correct? So far as the truth of the statement is concerned, even the evidence of the five witnesses suggests otherwise. In the first place it must be remembered that Mohanlal Desai could have voted for the Congress (I) candidate without changing the party. It was not necessary for him to change the party for the purpose of voting for the Congress (I) candidates. In other words, it was not imperative for him to change the party to cast his vote in favour of the Congress (I) candidates. Secondly, the power to grant a licence vests in the Central Government and not the State Government. Now according to the witnesses, Mohanlal Desai changed the party on a mere assurance given by the Chief Minister, may be in the presence of two guarantors, whose names are not known. If such a promise was in fact made, the question is, what follow-up action was taken to fulfil this promise. The evidence of the witnesses clearly discloses that to their knowledge no follow-up action whatsoever was taken. The evidence was recorded in November-December 1982, that is, after a lapse of almost six months after the defection of Mohanlal Desai. There is no evidence to show that any initiative was taken by Mohanlal Desai during all this period to secure the promised licence. The evidence also does not show that Mohanlal Desai had made any application for a licence to start a sugar factory in Kheralu. On the part of the State Government also, there is nothing on the record to show that any initiative was taken to fulfil the so-called promise given by the Chief Minister to Mohanlal Desai. In short, the evidence on record clearly establishes that no effort whatsoever was made either by the State Government or Mohanlal Desai for the fulfilment of the so-called promise given by the Chief Minister to secure the defection of Mohanlal Desai. Is it possible to believe that a person who changed loyalty on the promise stated to have been given by the Chief Minister would keep quiet even if his promise has remained unfulfilled? This circumstance creates a serious doubt regarding the statement alleged to have been made by Mohanlal Desai to these five witnesses. Two conclusions can be drawn therefrom. The first is that no such statement was made by Mohanlal Desai to these witnesses and the second is, that even if Mohanlal Desai made the statement it is factually untrue. The learned counsel for the respondents pointed out that P.W. 1 and P.W. 2 have been shown to have little regard for truth on the first point regarding their having noticed the certain marks on the ballot papers and, therefore, it would be hazardous to place implicit faith on their statements made out of political considerations on the second point also. The learned counsel pointed out that P.W. 1, P.W. 2 and P.W. 4 belong to the opposition party while the Newspapers to which P.W. 3 and P.W. 5 are attached were biased against the Congress (I) party and, therefore, it would be unwise to place implicit reliance on the oral testimony of these witnesses without the respondents having an opportunity to cross-examine the person who is alleged to have uttered the statement. The learned

counsel pointed out that even if it is assumed that technically speaking, the statement made by Mohanlal Desai to these witnesses is not hearsay, it can have little or no probative value without Mohanlal Desai having been offered for cross-examination. It was lastly urged that if the Court were to place reliance on such a statement attributed to a third party, an innocent person may be held guilty of corrupt practice without he having an opportunity to establish in Court that the statement is false. There is considerable substance in the submission made by the learned counsel. As pointed out earlier, even if I were to assume that Mohanlal Desai did make a statement as alleged by the five witnesses, there is no guarantee about the truth of that statement. No probative value can, therefore, be attached to a statement brought on record in this manner without examining the maker of the statement. Besides, the statement would prejudice not only the maker of the statement but also the person who is alleged to have made the promise. Before the Court comes to the conclusion that such a promise was made, it must have cogent evidence. The Court cannot reach such a conclusion lightly on such evidence placed before it which is merely to the effect that Mohanlal Desai made a certain statement in their presence and hearing. I am, therefore, of the opinion that the evidence is not sufficient to hold that the statement attributed to Mohanlal Desai is factually correct. In fact, the subsequent lack of follow-up action casts a serious doubt regarding the veracity of the evidence led through the five witnesses examined on behalf of the petitioner.

20. Lastly, there is also a mention in the evidence of these witnesses that the Chief Minister had secured the entry of Shri Antholia in the Congress (I) Party on the promise that he would be given a party ticket in the next election. On the face of it, this allegation appears to be absurd. In the first place Shri Antholia is not examined. Secondly, it was not necessary to join the Congress (I) for casting a vote in favour of the respondents. Thirdly, the next general election was to be held almost three years thereafter in 1985 and, therefore, it is difficult to believe that Shri Antholia would switch over to the Congress (I) Party on the mere promise that he would be given a party ticket and his election expenses would be borne by the party. Even the witnesses are lukewarm so far as this part of the case is concerned. I am not inclined to hold that there is any truth in this allegation.

21. In view of the above, I come to the conclusion that the evidence insofar as the allegation of corrupt practice is concerned falls far short of that required to prove the charge. I am of the view that the petitioner has miserably failed to prove the allegation that the Chief Minister Shri Madhavasinh Solanki secured the defection of the two M.L.As by holding out the alleged promises. In the absence of reliable evidence it is hazardous to place reliance on the evidence of the witnesses who themselves have no personal knowledge regarding the truth of the statements alleged to have been made to them by Shri Mohanlal Desai and Shri Antholia. A serious doubt arises from the state of the evidence whether any such statement was at all made by the two M.L.As, as denoted to by the witnesses. Even if it is assumed that such statements were made, no probative value can be attached to them in the absence of evidence corroborating the same. On the contrary, in the present case there is evidence suggesting the contrary. I am, therefore, of the opinion that the charge of corrupt practice cannot be sustained.

22. In view of the above, the points for determination raised at Exhibit 11 are answered as under :

ISSUES	ANSWERS
1	2
(1) Does the petitioner prove that corrupt practice of illegal gratification as alleged in paragraph 10 of the petition was practised by any one with the consent of all or one or more of the respondents? If yes, what is its effect?	First part in the negative Second part does not survive.

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 1 | 2 |
| (2) Does the petitioner prove that some of the voters had cast their votes in a manner which made it possible to identify them and their preference? If yes, is it shown that reception of such a vote/votes was improper and the improper reception of such votes has materially affected the result of the election? | First part in the negative Second Part does not survive. |
| (3) Is the petitioner entitled to a declaration that the election of all or any of the returned candidates is void? | In the negative. |
| (4) If issue No. 3 is answered in the affirmative, what further relief or reliefs is the petitioner entitled to? | Does not survive. |

For the above reasons the petition fails and is dismissed with costs.

SEAL
TRUE COPY
Sd/-

By the order of the Court
Sd/-Sure
Deputy Registrar, Patna -4-84
Sd/-

Deputy Registrar,
The 28 day of April, 1984
Idd/- 19-4-84.

नई दिल्ली, 31 मई, 1984.

आदेश

आ० अ० 79.—मई, 1980 में बिहार विधान सभा के लिए हुए साधारण निर्वाचनों में 202 बाढ़ सभा निर्वाचन क्षेत्र से निर्वाचन लड़ने वाले एक अभ्यर्थी श्री राणा शिव लखपति सिंह गाँव व पो० सामरी था। बाढ़, जिला पटना, बिहार को लोक प्रतिनिधित्व अधिनियम 1951 की धारा 10 के अधीन अपना निर्वाचन व्ययों का लेखा उक्त अधिनियम तथा उसके अधीन बनाए गए नियमों द्वारा अपेक्षित रीति से दाखिल करने में असफल रहने पर इस आयोग के तारीख 19 अगस्त, 1981 के आदेश सं० बिहार वि० सं० 202/80(157) द्वारा निर्वाह घोषित कर दिया गया था;

और उक्त श्री राणा शिव लखपति सिंह ने उस पर लागू निर्वाहता को हटाने के लिए एक अभ्यावेदन दिया है जिसमें उसने विधि द्वारा अपेक्षित रीति से लेखा दाखिल करने में अपनी असफलता के लिए कारण बताए हैं, और अपने निर्वाचन व्ययों के लेखे झुट्टी को दूर कर दिया है;

आ० भारत निर्वाचन यींग ने उसके द्वारा दाखिल अभ्यावेदन पर विचार किया है और उक्त असफलता के लिए उसके द्वारा दिए गए तर्कों से आयोग का समाधान हो गया है।

अतः अब, उक्त अधिनियम की धारा 11 द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए निर्वाचन आयोग ने उसकी निर्वाहता की अवधि को उस अवधि तक घटा दिया है जितनी वह

पहले ही भोग चुका है और तारीख 31 मई, 1984 से असमाप्त अवधि के लिए निर्वाहता को हटाता है।

[सं० बिहार-वि० सं०/202/80]

New Delhi, the 31st May, 1984

ORDER

O.N. 79.—Whereas Shri Rana Shiv Lakhpati Singh of Village and P.O. Sahri, P. S. Barh, District Patna, Bihar, a contesting candidate for the General Election to the Bihar Legislative Assembly from 202-Barh Assembly Constituency held in May, 1980, was disqualified by the Election Commission vide its order No. BR-LA/202/80(187), dated the 19th August, 1981, under section 10A of the Representation of the People Act, 1951, for failure to lodge the account of his election expenses in the manner required by the said Act and the Rules made thereunder;

And whereas the said Shri Rana Shiv Lakhpati Singh, has submitted a representation for removal of the disqualification for removal of the disqualification imposed on him, giving reasons for his failure to lodge the account in the manner required by law and has also since removed the defects in his account of election expenses;

And whereas the Election Commission has taken into account the said representation filed by him and is satisfied with the reasons given therein for the failure.

Now, therefore, in exercise of the powers conferred by section 11 of the said Act, the Election Commission has reduced the period of disqualification imposed on him to the period of disqualification already suffered by him and removed the disqualification for the unexpired period with effect from the 31st May, 1984.

[No. BR-LA/202/80]

नई दिल्ली 16 जून 1984

आदेश

आ० अ० 80.—सिक्किम विधान सभा के लिए सन् 1979 में हुए साधारण निर्वाचनों में 28-रमटेक विधान सभा निर्वाचन क्षेत्र से निर्वाचन लड़ने वाले एक अभ्यर्थी श्री नामग्याल त्सेरिंग भुटिया, तड़ोंग बाजार, दरगाँव, पूर्व सिक्किम 737102, को भारत निर्वाचन आयोग द्वारा अपने तारीख 6-3-1982 के आदेश सं० 76 सिक्किम/79 द्वारा अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहने पर लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10 के अधीन निर्वाह किया गया था;

और उक्त श्री नामग्याल त्सेरिंग भुटिया ने उस पर लागू की गई निर्वाहता को घटाने के लिए एक अभ्यावेदन दिया है जिसमें उसने निर्वाचन व्ययों का लेखा दाखिल करने में अपनी असफलता के बारे में कारण बताए हैं जिनके समर्थन में एक डाक्टर की चिकित्सा प्रमाण-पत्र तथा शपथ-पत्र भी दाखिल किया है। उन्होंने अपने निर्वाचन व्ययों का लेखा भी दाखिल कर दिया है।

और उनके द्वारा दाखिल किए गए अभ्यावेदन तथा शपथ-पत्र पर निर्वाचन आयोग ने विचार किया है और इस असफलता के लिए उनके द्वारा दिए गए कारणों से इस आयोग का समाधान हो गया है।

अतः अब उक्त अधिनियम की धारा 11 द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, निर्वाचन आयोग ने उस पर लागू निरर्हता की अवधि का उस अवधि तक घटा दिया है, जो वे अब तक भोग चुके हैं और तारीख 17 जून, 1984 से अनवरत अवधि के लिए उसकी निरर्हता को हटा दिया है।

[मं० 76/सिक्किम/79]

आदेश से
श्रीराम सेठी, अवर सचिव
भारत निर्वाचन आयोग

New Delhi, the 16th June, 1984

ORDER

O.N. 80.—Whereas, Shri Namgyal Tshering Bhutia of Tadong Bazar, Dargaon, East Sikkim-737102, a contesting candidate for the General Election to Sikkim Legislative Assembly from 28-Runtek Assembly Constituency held in 1979, was disqualified by the Election Commission vide its order No. 76/SKM/79 dated 6th March, 1982, under sec-

tion 10A of the Representation of the People Act, 1951, for failure to lodge the account of his election expenses;

And whereas, the said Shri Namgyal Tshering Bhutia had submitted a representation for removal of the disqualification imposed on him giving reasons for his failure to lodge the account of his election expenses duly supported by the medical certificate and affidavit and has also submitted the account of his election expenses;

And whereas, the Election Commission has taken into the account the said representation and affidavit filed by him and is satisfied with the reasons given therein for the failure.

Now, therefore, in exercise of the powers conferred by section 11 of the said Act, the Election Commission has reduced the period of disqualification imposed on him to the period of disqualification already suffered by him and removed the disqualification for the unexpired period with effect from 17th June, 1984.

[No. 76/SKM/79]

By Order,
S. R. SETHI, Under Secy.
Election Commission of India.